

REMARKS

Claims 62-71, 74-83, 86, 87, 90, 91, and 92 are now pending in the application. By this Paper, Claim 90 has been amended and Claims 91 and 92 have been added for consideration. Support for the foregoing amendments and new claims can be found throughout the specification, drawings, and claims as originally filed. The Examiner is respectfully requested to reconsider and withdraw the rejections and objections in view of the amendments and remarks contained herein.

SPECIFICATION

The specification is objected to because of certain informalities. Applicant has made the appropriate corrections, thereby rendering the objection moot.

REJECTION UNDER 35 U.S.C. § 112

Claim 90 stands rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. This rejection is respectfully traversed.

The Examiner asserts that the disclosure lacks support for the language of Claim 90 reciting that during an impacted state, the peripheral edges of the outer shell will contact the column to augment the shock absorbing resistance provided by the inner liner. See the Office Action mailed August 17, 2011 at Pages 3 and 16. At the outset, Applicant notes that Claim 90 has been amended to recite that

during an impacted state at least one of the first and second end portions of the outer shell are positioned to engage and make contact with the upright column in response to an impact causing sufficient compression of the inner liner, such that the inner liner provides substantially all of an

initial shock absorbing resistance during the impacted state and such that the outer shell, once engaged with and contacting the upright column, augments the shock absorbing resistance provided by the inner liner.

Applicant submits that while the written description does not *explicitly* describe these elements, one of ordinary skill in the art would recognize from the written description and drawings as a whole that the claimed elements are fully supported and enabled by the specification and that the Applicant had possession of the claimed elements.

The written description states that the outer shell (300) can be formed from a material having a high resistance to impact such as a high density polyethylene that transfers impact forces to the inner liner (301) and has a persistence of shape (i.e., the ability to return to its original shape). See the Specification at Page 13, third paragraph (¶ [0077] of the published application); Page 15, fifth paragraph (¶ [0082] of the published application); and Page 23, third paragraph (¶ [0116] of the published application). The written description also states that inner liner (301) can be formed from a resiliently compressible material (e.g., a closed cell SBR foam) and has "sufficient deformability to be squeezed between the outer shell and the column" in response to an impact. See the Specification at Page 20, first full paragraph (¶ [0102] of the published application); and Page 21, third paragraph (¶ [0107] of the published application).

Based on this disclosure, one of ordinary skill in the art would recognize that the inner liner (301) is formed from a material that is substantially more resiliently compressible than the outer shell (300). As the specification explicitly states, an impact force will be transferred from the outer shell (300) to the inner liner (301), which has

sufficient deformability to be compressed between the outer shell and the column. Because (1) the outer shell is less compressible than the inner liner, (2) the material and shape of the outer shell is designed primarily to initially transfer impact forces to the inner liner, and (3) the inner liner is designed to be compressed between the outer shell and the column, one of ordinary skill in the art would recognize that substantially all of the initial shock absorbing resistance would be provided by the inner liner, as claimed.

Furthermore, one of ordinary skill in the art would recognize from Figure 6 (annotated below) that as the inner liner (301) is compressed, the outer shell (300) will move with the inner liner (301) toward the column, until the end portions of the outer shell make contact with the lips (605, 609) of the column. One of ordinary skill in the art would recognize that once the outer shell contacts the column, additional energy from the impact would be absorbed by compression of the outer shell, as the column would prevent further movement of the end portions. In this manner, compression of the outer shell augments the shock absorbing resistance of the inner liner when the outer shell engages and contacts the column, as claimed.

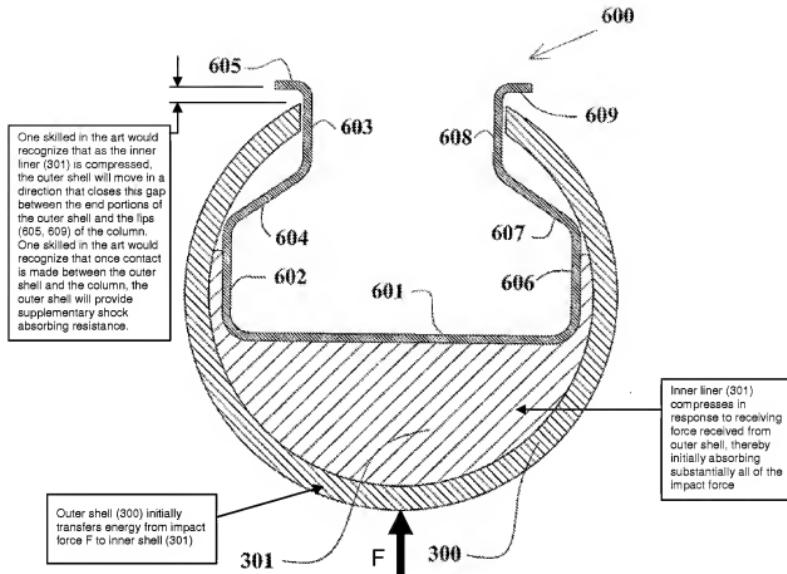


Figure 6

Applicant notes that while the movement of the outer shell into contact with the column described above is not explicitly described in the written description, one of ordinary skill in the art would recognize this operation from an examination of Figure 6 in light of the portions of the written description identified above. That is, with an understanding of the structure and materials of the outer shell (300) and the inner liner (301) described in the specification, the claimed two-stage energy absorbing operation of the column protector would be readily apparent to one of ordinary skill in the art. Applicant respectfully submits that the specification does not necessarily need to explicitly describe every claimed feature, as "drawings alone may provide a 'written

description' of an invention as required by Sec. 112." See, MPEP §2163; and *Vas-Cath, Inc. v. Mahurkar*, 17 USPQ 2d 1353 (N.D. Ill. 1990).

In light of the foregoing, Applicant respectfully submits that one of ordinary skill in the art would have recognized from the written description and drawings that Applicant had possession of the claimed elements. Reconsideration and withdrawal of the rejection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 90, 62-69, 71, 74-83, 86, and 87 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ian (GB 2,321,688) in view of Homolka et al. (U.S. Pat. No. 6,684,572; "Homolka"). This rejection is respectfully traversed.

Claim 70 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Ian in view of Homolka and further in view of Jacoby et al. (U.S. Pat. No. 4,088,229; "Jacoby"). This rejection is respectfully traversed.

Applicant notes that Claim 90 has been amended to recite that "first and second end portions are held apart from each other and from the upright column by the inner liner and are spaced apart from the inner liner and the upright column when retained in said self attaching manner and when the column protector is in a non-impacted state." [Emphasis added] Contrary to Claim 90, Applicant submits that Ian teaches outer edge portions (6) of the shell (3) that directly contact the inner lining (1). See Ian at Figure 2.

Furthermore, the Examiner asserts that the shell (3) of Ian would be capable of augmenting the shock absorbing ability of the inner linings (1, 2) if the shell (3) was placed over a different size or shaped column such as a column having extensions

extending from portions (ZZ) that wrap around the end portions (6) of the shell (3). See the Office Action at Page 6 and annotated Figure 2 of Page 8. Applicant respectfully submits that the Office Action has failed to make a *prima facie* case that such a column is known or would have been obvious, nor has the Examiner articulated why it would have been obvious to configure the shell (3) of Ian on such a column in the manner claimed. As the Examiner surely knows, the initial burden is on the Examiner to provide a factual basis to support an obviousness conclusion. See *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

In light of the foregoing, Applicant respectfully submits that Claim 90, as well as Claims 61-71, 74-83, 86, and 87, dependent therefrom, are in condition for allowance. Reconsideration and allowance is therefore courteously solicited.

NEW CLAIMS

Claims 91 and 92 have been added for consideration. Independent Claim 91 recites, in part, first and second ends of an outer shell being spaced apart from a rectangular front portion and first and second lip members of a column protector when the column protector device is in a non-impacted state, and wherein the first and second ends are spaced apart from the inner liner in the non-impacted state. As described above, Applicant submits that Ian discloses ends (6) of the shell (3) directly contacting the inner liner (1), contrary to Claim 91. Therefore, Applicant respectfully submits that Claim 91 is in condition for allowance.

Independent Claim 92 recites, in part, an upright column, an outer shell, and an inner liner, wherein the upright column includes a rectangular front portion and first and

second lip members, and wherein first and second ends of the outer shell are disposed between and spaced apart from the rectangular front portion and lip members when the column protector device is in a non-impacted state. Applicant respectfully submits that the cited art fails to disclose or suggest such a configuration. Therefore, Applicant respectfully submits that Claim 92 is in condition for allowance.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: /Gregory A. Stobbs/ _____
Gregory A. Stobbs
Reg. No. 28,764

HARNESS, DICKEY & PIERCE, P.L.C.
P.O. Box 828
Bloomfield Hills, Michigan 48303
(248) 641-1600

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